



TENNESSEE HUMAN RIGHTS COMMISSION
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November 21, 2014
Board of Commissioner's
Meeting Minutes

Commissioners Present:

Commissioner Cocke
Chair Garrett
Commissioner Houston
Commissioner Horne
Commissioner Martin
Commissioner McDaniel
Commissioner Miller
Commissioner Pierce
Commissioner White-Phone
Commissioner Wurzburg

Commissioners Absent:

Commissioner Coleman Jr.
Commissioner Jones
Commissioner Selberg
Commissioner Starling
Commissioner Walker

Staff Present:

Beverly Watts, Executive Director
Sabrina Hooper, Deputy Director
Shalini Rose, General Counsel
Richard Gadzekpo, Housing Coordinator
Erica Kesse, Special Assistant to the Director/Communications
Lisa Lancaster, Executive Assistant

Guests:

Allen Staley, Centralized Accounting
Tony Gonzalez, The Tennessean
Donna DeStefano, TN Disability Coalition

Call to Order

Chair Garrett called the meeting to order at 9:09 a.m. CDT and welcomed those in attendance. Roll was called. She asked for a moment of silence for Commissioner Jones after which she read the resignation letter of Commissioner Bill Coleman.

Status of Human Rights in Tennessee

The meeting was turned over to Executive Director Beverly Watts to present the *Status of Human Rights in Tennessee* report. The Education and Outreach committee received this 216 page report last week and approved it for distribution today to the full board and also recommended its release to the public if approved by the full board.

The report was created from information gathered during the hearings conducted by THRC in Memphis, Chattanooga, Nashville and Knoxville. Community leaders, researchers, government officials and others were invited to offer testimony at these hearings. Data gathered identified areas to be reviewed, discussed, and shared with the public. She noted that video of the hearings and testimony can be viewed on THRC YouTube channel at <https://www.youtube.com/channel/UCGQLA5F2mVuKKHWAU6pxHg>.

Executive Director Watts gave a summary of the report via a PowerPoint presentation. During the review of housing, Commissioner McDaniel asked for an example of housing disparities. Executive Director Watts noted that in situations where housing is not available in certain locations for individuals and/or is scarce in particular neighborhoods and inadequate conditions.

Also during the review of the Housing section, Commissioner Cocke asked if a convicted felon whose rights have been restored would they still be unable to live in government housing where that law applies. Executive Director Watts was unable to answer the question but would research the data and provide an answer when it is available.

Commissioner Wurzburg encouraged all present to read Michelle Alexander's book *The New Jim Crow*, as it details how America progressed regarding the treatment of black and brown individuals, which includes the transition from slavery to Jim Crow to the southern strategy of Law and Order and lastly the supposedly neutral concept of the war on drugs. Ten years ago there were 300,000 prisoners and today there are 2 million, which are mostly black and brown. When they come out of prison they cannot vote, cannot get credit, cannot buy a house and cannot get a job. Please read this book, it is well written and very understandable.

During the review of immigration, Commissioner McDaniel asked if there might be some resurrection of the English only issues in light of President Obama's actions regarding immigration. Executive Director Watts noted that the future is not clear. The action taken only covers a limited number of immigrants. The actions intention is to target and deport criminals.

During the review of LGBT issues, regarding the Tennessee state law that prohibits changing gender on an original birth certificate; that says if you are transgender you cannot change your birth certificate to the gender you changed to surgically. Commissioner Cocke asked if that was also true for other states. Executive Director Watts noted the person would have to adhere to whatever the law stated in which they were born. Commissioner McDaniel noted that the City of Chattanooga rejected the coverage of domestic partners at the city level.

During the Violence against women review, Commissioner Wurzburg noted that in the designated highway rest areas from Memphis to Nashville the restroom stalls have posters with information about human and sex trafficking. Also, hotels are training their employees to recognize signs and to report their suspicions to employers.

The overall recommendations resulting from this report are:

- Make public aware of the report via press release, and distribute to other sources such as libraries, organizations and via our web page, Facebook, and email list, write opinion articles; appear on radio and TV to publicize this report.
- Hold Roundtable presentations across TN over the next 6 months about the report, its issues and recommendations.
- Identify possible THRC legislative initiatives.
- Refer issues and recommendations to other sources as appropriate.
- Confer and meet with presenters to update actions or issues based on their testimony periodically.
- Identify specific issues or concerns and where appropriate, hold more targeted hearings.

A motion was made by Commissioner McDaniel to approve the report for release and it was seconded by Commissioner Miller. A vote was taken and passed.

Commissioner Miller made a motion to waive the review of the minutes of the September meeting and accept them as printed. Commissioner Pierce seconded the motion. A vote was taken and passed.

Executive Director's Report

Executive Director Watts began her commission report that we had three vacancies that have now been filled; one by promotion and two investigator positions that will be reported on by Deputy Director, Sabrina Hooper. There is still one vacant ASAll position which is the customer service front desk. We are currently using other staff to fill the duties and are planning to fill the position in April of 2015.

Over the next several months, we will have staff limitations due to three or four staff requesting to be out on extended leave for a variety of reasons. This will cause significant shortages that we will work through over the coming months. Commissioner Cocke asked if we could borrow employees from other departments. Executive Director Watts noted that many parties must agree for such an agreement to happen after which agreements must be made on how to pay the individuals.

There has been no additional information on the Audit other than what we have provided in previous meetings. Our budget hearing was held on Monday, November 17, 2014 which went well. No questions were asked but there is a 7% cut on the table. If we have to take the full cut, it will be a serious challenge for the agency.

Five new board members have been appointed by Governor Haslam and they are, Chrystal Horne, Annazette Houston, Bill Martin, Ralph White and Rieta Selberg. Also Speaker of the House, Beth Harwell has appointed former Executive Director, Julius Sloss. The appointments are effective on January 1, 2015. There are still three appointments to be made: one by the speaker of the House and two by the Lt. Governor. Once these are made our new board of nine members will be complete. We have scheduled the first meeting of this board for Friday, January 23, 2015 and it will be an in person meeting. This will be an organizational meeting. The other meetings for the year are tentatively

scheduled for March 20, May 15, July 17 telephonic, September 18 and November 20 telephonic. These dates will be posted on the website once the new board has approved them.

Commissioner Horne made a motion to accept the Executive Director's report and Commissioner Miller seconded the motion. A vote was taken and passed.

Law and Legislation Committee Report

Chair of the Law and Legislation committee, Commissioner Wurzburg noted that the committee met on November 12, 2014 to discuss enabling legislation to conform to our other reporting agencies policies. She then turned the meeting over to General Counsel, Shalini Rose who discussed the purposed legislative request for the up-coming session.

The first purposed change is a procedural issue that was brought up in our HUD Performance Assessment this year.

The Fair Housing Act says that if a cause case is found then the parties can elect to take the case to court and that they have twenty (20) days of the discrimination cause finding issue to decide; HUD has to maintain that action. THRC has a similar provision in our law that says that we have to maintain that action if we find cause but if the parties want to take it to court they must elect within ninety (90) days of filing the complaint.

We usually never issue a finding within ninety (90) days of filing the complaint and HUD wants us to change that to within twenty (20) days of the finding of discrimination. We wanted to make sure that we have the Law and Legislation committees' approval to go forward with that change. It has never been an issue until this year because a party requested to do it and we ended up having to transfer the case to HUD so they could do it under the federal law. We need to make the change to be substantially equivalent to HUD.

The second issue is to attempt to get reasonable accommodation added to the employment law. This is a difference between THRC and the Federal law. Last year a bill passed that made us more in compliance with Federal by adding caps to damages but it failed to add reasonable accommodations. We think this needs to be in our law because we lose about \$30,000 or about 50 cases every year by transferring cases to EEOC. Customer service is also transferring calls to EEOC because we cannot take these cases. The Governor recently issued an Executive Order that helps people with disabilities get employment and a key piece of that would be for employers to provide reasonable accommodations for people with disabilities; it is covered by Federal law and not state law.

The Law and Legislation committee voted to recommend moving forward with these two pieces of legislation and board approval is needed to proceed. Shalini noted that any suggestions from board members regarding possible sponsors would be helpful. Commissioner Wurzburg noted that we did not have a choice and urged commissioners to vote for approval if we want to have equivalency with our federal laws. Commissioner Pierce made a motion to move forward with the purposed changes and it was seconded by Commissioner Martin. A vote was taken and passed.

Commissioner Wurzburg asked if an interviewer in an in-person interview perceived a disability, would it be discriminatory to ask if the person would be asking for an accommodation. Executive Director Watts noted that it would be discriminatory and that you cannot address disability issues until an offer has been made.

Commissioner Horne recommended that we talk to Senator Todd Gardenhour about sponsoring these bills. Executive Director Watts noted that Senator Henry (retired) had sponsored disability legislation in the past. Rep. Darrin Jernigan has taken up a disability issue as it relates to the school for the blind. He himself is mobility impaired and may want to get involved.

Commissioner Cocke made a motion to accept the Law and Legislation committee's report and Commissioner Wurzburg seconded the motion. A vote was taken and passed.

Education and Outreach Committee Report

Chair McDaniel gave a report on the Education and Outreach Committee meeting noting that the committee heard an overview of the 2014 year events given by Erica Kesse. She reported that on November 12, 2014 at the Outreach and Education Committee meeting the overview included that for the fiscal year the agency scheduled 95 events and 47 of those are completed.

April is Fair Housing Month and several events occur during the month. Also, the Employment Law Seminar will be held on June 11, 2015. We have currently reached approximately 10,000 individuals.

Chair McDaniel added that the other part of the committee meeting was focused on the Status of Human Rights in Tennessee which was presented this morning.

Commissioner Pierce made a motion to accept the Education and Outreach Committee report and it was seconded by Commissioner Garrett. A vote was taken and passed.

Employment Case Report

Deputy Director Sabrina Hooper reported on the case processing period from September 1, 2014 to October 31, 2014. During this time we received 96 inquiries which resulted in 63 charges being accepted for investigation. Fifty-five (55) were dual filed charges and 8 THRC Only charges. Within the same timeframe the agency closed 55 cases with an average of 311 days of investigation. Our open inventory at the end of October 2014 was 235 cases.

Nine mediations were closed resulting in monetary benefits of \$88,300 to the complainant and nine settlements closed which resulted in approximate \$47,000 in monetary benefits to the complainant.

Last year we received 124 inquiries which resulted in 77 charges being accepted for investigation; 73 were dual filed and 4 were THRC Only cases. We closed 48 cases with an average of 234 days of investigation. Our open inventory at the end of October 2013 was 301 cases. We closed 9 mediations and 3 settlements with an approximate total

monetary benefit of \$68,900 to the complainants. As of July 2014 we have had 19 mediations conducted and Complainants were represented 3 times while Respondents were represented 14 times.

The comparison of years reflects the charges received and accepted have decreased by 22% and 18%. The case closures saw an approximately 15% increase during this timeframe. The Worksharing Agreement for the EEOC contract required agency recertification. The new contract was reviewed and signed on October 20, 2014. We look forward to our continuous working relationship.

The customer service witness surveys for July 1, 2014 to October 31, 2014 reviewed 125 cases; 62 parties were called and 12 were interviewed. There were total of three comments made: one caller noted that the investigator was very professional however one complainant's witness and one respondent's witness did not recall being interviewed. These comments are being reviewed and we will report on the findings at the next meeting.

For the 10 question survey for both employment and housing 125 cases were reviewed and 19 responses were returned. The overall comments were that the Complainants were dissatisfied with the results of the case and the Respondents thought the investigator were very professional.

At the beginning of the fiscal year on July 1, 2014 we began using Survey Monkey. From the 125 cases review only 95 parties had email addresses and we received 11 responses. No comments were provided.

The employment division is looking at three strategic goals: completing the contracted number of cases in a timely manner, to investigate the complaints within 270 days and to always offer and conduct mediations. For the fiscal year we have closed 102 cases (85 dual filed and 17 THRC only). The average number of days in investigation is 293 which is 23 days above the goal.

We currently have about 40 cases that are over 300 days and we are working on closing these aged cases; including mediations closure the days of investigation should balance out by the end of the contract. We had 9 mediations that closed in the timeframe with approximately \$88,300 in monetary benefits to the Complainants and 9 settlements with \$47,000 in monetary benefits.

Over the next six months we are expecting to complete 30 case closures for a total of 210 cases by the end of June giving us a total of 295. We will still have three months to complete the EEOC contract.

Concerning the staff vacancies it was reported that Linda Reed, Regional Coordinator in the Memphis office retired with 30 years of service. Teresa Thompson was promoted into the Regional Coordinator's position. Rodney Urserly was hired, beginning December 1, 2014, to fill the position of employment investigator in the Memphis office. The promotion of Matthew Stephenson from Nashville's Regional Coordinator to Title VI Compliance

Director resulted in Billie Jean Haddock being promoted to Regional Coordinator. Candice Bass was hired, beginning December 1, 2014, as employment investigator in Nashville.

A motion to accept the Employment report was made by Commissioner Martin and seconded by Commissioner Horne. A vote was taken and passed.

Housing Case Report

Housing Coordinator Richard Gadzekpo reported that during the period from September 1, 2014 to October 31, 2014 64 inquiries were received resulting in 28 charges being accepted. Of the cases accepted, disability was the bases for 50% cases. During the period, 20 complaints were closed and 60% were closed within 100 days.

There were no mediations in the period but the six conciliations yielded \$14,625 in benefits. Fourteen thousand dollars of the benefits were from one very complex case. When we do the comparison between 2014 and 2013 it shows that inquiries received, inquiries accepted and benefits received have all increased as well as the case processing age has improved.

Our efficiency goal is currently at 61% and we hope to stay on target to reach the goal HUD has set for us. Also for this fiscal year, we have established for our utmost goals to reach the HUD efficiency goal of 50%. We are on target to meet the goal at 61% of our cases being closed within 100 days.

We have set a goal of closing 100 dual filed cases for the fiscal year but we are not close to this goal. In looking at the inventory and the number of cases being closed within each month at approximately 9, we should be able to close 108 by the end of the fiscal year.

Concerning our goal of mailing the 100 day letters on time, we are currently meeting this goal. Monetary benefits received for the 10 conciliations conducted were in the amount of \$19,423.

A motion to accept the Housing report was made by Commissioner Pierce and seconded by Commissioner Cocke. A vote was taken and passed.

Legal Report

General Counsel Shay Rose reported on the September 1, 2014 to October 31, 2014 period when 47 employment cases were closed, 11 were administrative closures and 7 were conciliations and in housing we closed 19 cases and 6 administrative closures and 9 were conciliations/settlements. Also 9 copy requests were completed.

There were three training events during the period that included TALS Equal Justice University; Staff training of Corey Taylor, housing investigator and Mediation training for NCRC mediators who assist us with Spanish mediations. We also attended the Economic Summit for Women on October 20, 2014.

The cause case update includes the employment case where a corrections officer was terminated because of his race. This went to hearing in November 29, 2012, and the ALJ

has not issued a response. We have reached out to the ALJ several times and have received no order at this time.

In housing, the first case is a disability case regarding failure to grant a reasonable accommodation by moving the Complainant to a first floor apartment. Complainant has a new attorney and staff is continuing to revive discussions with the respondent and an onsite was conducted this week and the parties are close to a settlement.

The second case is a failure to grant a reasonable accommodation based on disability which was caused on June 30, 2014. The landlord felt that the Complainant calling an ambulance for assistance with her medical issues was a nuisance and evicted her for this reason. They also denied her request for a companion animal when they added an additional fee to her monthly rent which is not allowed under fair housing laws. This is a mixed finding case, as we did not find cause for the discriminatory statements, harassment or retaliation. The parties are close to a settlement and if they don't they will request a formal mediation which we will set up for them.

Associate General Counsel delivered twins last week and everyone is doing well. Preparations have been underway since July to anticipate both of the legal staff being out on leave and a process is in place to keep case processing, legislative issues and copy requests moving in our absence.

Commissioner Wurzburg made a motion to accept the legal report. Chair Garrett seconded the motion. A vote was taken and passed.

Outreach & Education

Erica Kesse reported on the period that covers September 1, 2014 through October 31, 2014. There are 95 events on the calendar and during the timeframe we completed 32 events. Five were exhibits, 9 presentations, 22 outreach and education events, 4 ads, 340 Facebook hits and 9 posts regarding the NCRC training on October 28 & 29 and November 13 & 14. These efforts reached 252 users and engaged 18 unique users.

On the YouTube channel, we had 183 views with 465 minutes watched and one new subscriber. There were four articles that are attached to your report. The goals are the release of the Status of Human Rights in Tennessee which will be available on our website tomorrow. Executive Director Watts noted appreciation for summaries provided by Ms. Kesse for the document.

An additional goal is to work with legal staff on preparation of the Employment law Seminar in June and engage more individuals on our Facebook page and Youtube subscribers. She and Tracy Davidson will be creating a new Webpage for the agency which will be release in April of 2015.

Commissioner Wurzburg asked if it would be possible to have a conference call seminar with old and new commissioners to train them on how to access and use Facebook and Youtube social media. Executive Director Watts noted that the agency has a full plate and staff will review your request and see if something could be worked out.

Commissioner Pierce noted that she attended the Economic Summit for Women.

Commissioner McDaniel made a motion to accept the communications report and Commissioner Pierce seconded the motion. A vote was taken and passed.

Title VI Compliance Report

Matthew Stephenson, Title VI Compliance Director was involved in a car accident a couple of days ago and in his absence Executive Director Watts reported on the timeframe of September 1, 2014 to October 31 2014. Twenty-five inquiries were received in September of which 5 complaints were filed and in October 20 complaints were received and 1 complaint filed. One case was closed in September and three cases closed in October.

Implementation plans were due on October 1 and all were received on time and there will be a report on the review of the plans in early December. They continue to provide technical assistance when requested and they are completing a compliance review of the Department of Education. The compliance review of the State Museum is complete with findings issued because 2 contract temporary workers did not know about Title VI regulations.

The goal is to do five compliance reviews a year and staff is currently reviewing the complaint process. The process is down to six days. They are developing investigation training for the Title VI Coordinators.

There is a joint investigation with THRC, TDOT and Federal Transportation Department currently taking place in Lincoln Park Association in Chattanooga, who report to the media daily so you may see it on the news. It is an issue involving roads coming through predominantly African American historic neighborhoods without communicating with the residents.

The association wants a building currently owned by the Erlanger Hospital to be given to them which could then be made into a park. The city says they have met with them and kept them informed but the complainants do not feel communication and action is adequate.

We have met with both parties and will review documents but we will not comment to the media as we are a neutral fact finding agency. We are looking for any omissions with respect to how they go into neighborhoods and notifications to the neighborhoods as related to the ethnic identity of the residents.

We are asking; when did they tell them, what did they tell them, what is their policy, is it consistent with the issues and is there a reason or rationale that was not taken into consideration. Commissioner McDaniel noted that the process was begun 10 years ago.

Upcoming goal include the process of reviewing policy guidance for sub-recipients, methods for monitoring and creating a sub-recipient manual that would contain what the

duties and responsibilities and a more detailed compliance report with in-depth data and also establishing a limited English Proficiency working group in the next several months.

A motion was made to accept the Title VI report by Commissioner Cocke and seconded by Commissioner Martin. A vote was taken and passed.

Announcements

Executive Director Watts announced that Erica Kesse will graduate from the Lipscomb Civic Leadership Program with her Masters degree in December and offered congratulations to her.

Thanks were offered to all staff who continue to keep things going toward the target and over the next months hope to hire additional staff to help.

Chair Garrett noted that all Commissioners have been asked to return their enforcement badges before they leave today.

Commissioner Pierce announced that female students in Middle Tennessee who are 9th grade through 11th grade should be nominated for the Music City League Leadership Program for girls. She will send out a notice with information on how to nominate students.

She also asked if we could send cards to Matthew Stephenson, Rachel Appelt, Shay Rose, Commissioner Coleman, Commissioner Jones and Commissioner White on behalf of the Commission.

Executive Director Watts presented each Commissioner with a personalized pen and pencil set to thank them for their service and dedication to this Commission, as well as the wonderful collaborative relationship that the agency and staff have had with this board. She noted that she will continue to call on former commissioners when meetings are in their home cities.

Chair Garrett adjourned the meeting at 11:00 a.m. following adjournment some commissioners shared stories of their time on the board and Chair Garret shared her adventures to Mount Everest after which lunch was served to commissioners and staff.